

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]
From: Eisenberg, Mindy[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: Mon 6/26/2017 7:20:39 PM (UTC)
Subject: FW: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**
WOTUS Draft Proposed Rule (OMB 06-23-17) EPA 6.26.17.docx

FYI

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Kupchan, Simma
Sent: Monday, June 26, 2017 3:20 PM
To: McGartland, Al <McGartland.Al@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Here is the final draft.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: McGartland, Al
Sent: Monday, June 26, 2017 3:16 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Kupchan, Simma
Sent: Monday, June 26, 2017 3:14 PM
To: McGartland, Al <McGartland.Al@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
ED_001271B_00086243-00001

From: McGartland, Al
Sent: Monday, June 26, 2017 3:11 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Fotouhi, David
Sent: Monday, June 26, 2017 3:10 PM
To: McGartland, Al <McGartland.Al@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: Re: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Attorney Client / Deliberative Process Ex. 5 Thanks.

Sent from my iPhone

On Jun 26, 2017, at 3:08 PM, McGartland, Al <McGartland.Al@epa.gov> wrote:

Attorney Client / Deliberative Process / Ex. 5

From: Eisenberg, Mindy
Sent: Monday, June 26, 2017 3:06 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Attorney Client / Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Kupchan, Simma
Sent: Monday, June 26, 2017 3:06 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>

Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Attorney Client / Deliberative Process / Ex. 5 and are looping in David and Justin FYI.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Eisenberg, Mindy

Sent: Monday, June 26, 2017 3:04 PM

To: McGartland, Al <McGartland.Al@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>

Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Attorney Client / Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: McGartland, Al

Sent: Monday, June 26, 2017 2:49 PM

To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>

Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Attorney Client / Deliberative Process / Ex. 5

From: Kupchan, Simma

Sent: Monday, June 26, 2017 2:47 PM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>

Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Looping in Al McGartland.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Neugeboren, Steven
Sent: Monday, June 26, 2017 2:47 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>
Subject: RE: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

Attorney Client / Deliberative Process / Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Kupchan, Simma
Sent: Monday, June 26, 2017 2:38 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Marten, Alex <Marten.Alex@epa.gov>
Subject: Draft sentence to **Attorney Client / Deliberative Process / Ex. 5**

All,

Attorney Client / Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 6/26/2017 2:50:56 PM
To: Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]
Subject: TPs for approps
Attachments: WOTUS Options Paperv 6.26.17.docx

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]
From: Eisenberg, Mindy
Sent: Wed 6/21/2017 10:11:06 PM
Subject: federal agency coordination
[federal agency issues 5-31-17.docx](#)

Hi Sarah,

Here is the document I mentioned **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

I'll be checking my email periodically while I'm away so please let me know if you have any questions or need anything from us.

Thanks!

Mindy

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Peterson, Carol[Peterson.Carol@epa.gov]
From: Eisenberg, Mindy
Sent: Tue 6/20/2017 10:32:00 PM
Subject: Fwd: TRCP Stakeholder Meeting Agendas (Tomorrow @9AM)
[TRCP Stakeholder Meeting 6.21.17 Agenda.docx](#)
[ATT00001.htm](#)
[TRCP Stakeholder Meeting 6.21.17 Agenda \(ANNOTATED\).docx](#)
[ATT00002.htm](#)

FYI. John will cover.

Sent from my iPhone

Begin forwarded message:

From: "Thomas, Latosha" <Thomas.Latosha@epa.gov>
Date: June 20, 2017 at 3:38:05 PM EDT
Subject: TRCP Stakeholder Meeting Agendas (Tomorrow @9AM)

Hi All,

Here are the agendas for tomorrow's TRCP stakeholder meeting. Please note that the

Deliberative Process / Ex. 5

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

Personal Phone / Ex. 6

thomas.latosha@epa.gov

To: Fotouhi, David[fotouhi.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Eisenberg, Mindy[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: Sat 6/17/2017 12:13:23 AM (UTC)
Subject: Fwd: revised WOTUS preamble
WOTUS Draft Proposed Rule revisions 6-15-17 Deliberative Process / Ex. 5
ATT00001.htm

Here you go

Sent from my iPhone

Begin forwarded message:

From: "Owens, Nicole" <Owens.Nicole@epa.gov>
Date: June 15, 2017 at 4:08:32 PM EDT
To: "Dorjets, Vlad EOP/OMB" EOP / Ex. 6
Cc: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>
Subject: revised WOTUS preamble

Hello Vlad –

Attached is a revised version of the WOTUS preamble. Please let us know if you have questions.

Thanks,
Nicole

To: Owens, Nicole[Owens.Nicole@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Curry, Bridgid[Curry.Bridgid@epa.gov]
From: Eisenberg, Mindy
Sent: Thur 6/15/2017 5:41:07 PM
Subject: transmittal to OMB revised preamble
WOTUS Draft Proposed Rule revisions 6-15-17 plus econ edits.docx

All,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

Mindy

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Hewitt, Julie[Hewitt.Julie@epa.gov]
From: Eisenberg, Mindy
Sent: Thur 6/15/2017 4:46:52 PM
Subject: thanks
WOTUS Draft Proposed Rule revisions 6-15-17.docx

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Eisenberg, Mindy
To: Campbell, Ann
CC: Goodin, John; Klos, Caroline; Christensen, Damaris
Sent: 6/15/2017 4:42:57 PM
Subject: RE: Upcoming US Conference of Mayors Engagement with Mayors Appearance
Attachments: Bennet TPs USCM 6-23-17.docx

Hi Ann,
Here are proposed TPs for Tate. Let us know if you need anything else.

Thanks!

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Campbell, Ann
Sent: Tuesday, June 13, 2017 9:21 AM
To: Eisenberg, Mindy
Cc: Goodin, John ; Klos, Caroline
Subject: Fwd: Upcoming US Conference of Mayors Engagement with Mayors Appearance

Mindy - can you make sure these TPS come up through Mike before heading back over to OCIR. Thanks!

Begin forwarded message:

From: "Threet, Derek" <Threet.Derek@epa.gov>
Date: June 12, 2017 at 1:43:11 PM EDT
To: "Campbell, Ann" <Campbell.Ann@epa.gov>
Subject: FW: Upcoming US Conference of Mayors Engagement with Mayors Appearance

Ann – See below with a 6/15 deadline.

Can you assist?

Thanks.

Derek

From: Hannon, Armita
Sent: Monday, June 12, 2017 1:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Woolford, James <Woolford.James@epa.gov>; Stalcup, Dana <Stalcup.Dana@epa.gov>
Cc: Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Hannon, Armita <Hannon.Armita@epa.gov>; Kelly, Albert <kelly.albert@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Brooks, Becky <Brooks.Bekky@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Matthews, Demond <matthews.demond@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>

Subject: Upcoming US Conference of Mayors Engagement with Mayors Appearance

Hi All-

Our DAA, Tate Bennett, is set to meet with a group of 10 – 15 mayors for Engagement, Updates, Dialogue, on Friday, June 23, in Miami Beach, FL during the USCM's 85th Annual Meeting. This is a 2 part hour: Part 1: WOTUS Updates (2:30 – 3:00 pm); Part 2: Superfund Updates (3:00 – 3:30 pm). Tate will provide updates on EPA's latest actions in both of these priority areas. She will hear feedback from the mayors on how they believe they can best engage and partner with EPA, and what EPA's actions mean for their communities.

The audience for Part I (WOTUS) will likely comprise Mayors who serve on the Mayors Water Council (Co-Chairs, Mayors Joy Cooper, Hallandale Beach, FL, and Joy Techel, Napa, CA). For Part 2 (Superfund Updates), mayors who serve on the Environment Committee are expected (Chair, Mayor Greg Stanton, Phoenix, AZ; Vice Chair, Mayor Bryan K. Barnett, Rochester Hills, MI). However, mayors outside of these committees will also be invited. Will share a list once confirmed.

Might you all provide some brief "top line messages," and updates for Tate's briefing packet by Thursday 6/15? I am putting that package together. And if you need to send me elsewhere with this request, just tell me who to hit and, as you know, I will!

Thanks very much as always!

Arnita

M. Arnita Hannon Christmon
Intergovernmental Liaison
Office of Congressional and Intergovernmental Relations
US EPA
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
202.564.3704 (O)

Personal Phone / Ex. 6

202.501.1545 (Fax)
hannon.arnita@epa.gov

From: Eisenberg, Mindy
To: Hewitt, Julie; Owens, Nicole; Nickerson, William; Kupchan, Simma
CC: McGartland, Al
Sent: 6/15/2017 12:09:00 PM
Subject: Fwd: draft revisions to preamble for review by 11 am
Attachments: ATT00001.htm; WOTUS revision preamble rationale revised 6-14.docx

In t **Deliberative Process / attorney client Ex. 5**
Deliberative Process / attorney client Ex. 5 Also, I think we should **Deliberative Process / attorney client Ex. 5**
Deliberative Process / attorney client Ex. 5

Does that work?

Sent from my iPhone

Begin forwarded message:

From: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Date: June 14, 2017 at 10:07:01 PM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Subject: draft revisions to preamble for review by 11 am

John/Mindy/WLO folks

Attached is draft revisions to **Deliberative Process / attorney client Ex. 5**
Deliberative Process / attorney client Ex. 5 I have highlighted in yellow the new paragraphs.

This needs to get to OMB as soon as possible tomorrow. Simma is going to have the pen in the morning and I ask that we receive one set of comments from OW, and one set of comments from Army/Corps (leaving to Simma and the wetlands division the best way to manage getting comments from the Corps) by 11 am.

I will shortly leave a voicemail that has additional context.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

Message

From: Eisenberg, Mindy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFB4C26BB6F44C7DB69F9884628B3EF9-EISENBERG, MINDY]
Sent: 6/13/2017 2:14:32 PM
To: McDavit, Michael W. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cb54848e7f641bf90e7cbbfedb28971-Michael W. McDavit]
Subject: Fwd: WOTUS TPs for NAFSMA Flood & Stormwater Management 2017 Meeting
Attachments: WOTUS TPs.docx; ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

From: "Thomas, Latosha" <Thomas.Latosha@epa.gov>
Date: June 13, 2017 at 10:13:47 AM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Christensen, Damaris" <Christensen.Damaris@epa.gov>
Subject: WOTUS TPs for NAFSMA Flood & Stormwater Management 2017 Meeting

Hi!

Mike is speaking at the NAFSMA Flood & Stormwater Management 2017 meeting/conference on 6/28. He'll be focusing mostly on stormwater, infrastructure, and WOTUS. Are the attached WOTUS TPs still current? If there are any changes, could you please send to me by **6/20 COB**? Thanks!

Latosha Thomas
U.S. Environmental Protection Agency
Office of Water (On Detail)
(202) 564-0211 (desk)

Personal Phone / Ex. 6

 (cell)
thomas.latosha@epa.gov

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Goodin, John[Goodin.John@epa.gov]; Laity, Jim A. EOP/OMB
From: Dorjets, Vlad EOP/OMB
Sent: Mon 6/26/2017 11:19:55 PM
Subject: Updated Documents

EOP / Ex. 6

WOTUS Draft Proposed Rule (OMB 06-26-17).docx
WOTUS Draft Proposed EA (OMB 06-26-17).docx

Updated documents are attached. I may be in Jim's office so please call me or him **EOP / Ex. 6** you have any questions.

To: Goodin, John[Goodin.John@epa.gov]; Hough, Palmer[Hough.Palmer@epa.gov]; Nalven, Heidi[Nalven.Heidi@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kaiser, Russell[Kaiser.Russell@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Weinstock, Larry[Weinstock.Larry@epa.gov]
Cc: Brown, Robert[Brown.Robert@epa.gov]
From: Moore, Kristie
Sent: Mon 6/26/2017 10:29:43 AM
Subject: FW: Polling for Tuesday SAC hearing
[FY18 PB WOTUS DG.docx](#)

Sorry. Looping in Larry and Mike McDavit.

Kristie M. Moore

Office of Wetlands Oceans and Watersheds

U.S. Environmental Protection Agency

EPA West

1200 Pennsylvania Ave., NW

MC-4501 T

Washington, DC, 20460

office: (202) 566-1616

fax: (202) 566-1544

From: Moore, Kristie
Sent: Monday, June 26, 2017 6:28 AM
To: Goodin, John <Goodin.John@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>
Cc: Nalven, Heidi <Nalven.Heidi@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Brown, Robert <Brown.Robert@epa.gov>
Subject: RE: Polling for Tuesday SAC hearing

Thank you John and Palmer.

John,

Let us know when we can send the Q&A to OW.

What about WOTUS? Do we want to make any edits to address the Senator's connectivity concerns? Attached is the latest WOTUS paper.

WOTUS – as the Agency moves forward on a new WOUS rule, the EPA needs to take into account the impact to Alaska. 2/3 of the state is already a wetland, and if connectivity is the key to the new rulemaking.. every mile of Alaska is connected to a wetland in some part.

Kristie M. Moore

Office of Wetlands Oceans and Watersheds

U.S. Environmental Protection Agency

EPA West

1200 Pennsylvania Ave., NW

MC-4501 T

Washington, DC, 20460

office: (202) 566-1616

fax: (202) 566-1544

From: Goodin, John

Sent: Sunday, June 25, 2017 12:15 PM

To: Hough, Palmer <Hough.Palmer@epa.gov>

Cc: Nalven, Heidi <Nalven.Heidi@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Moore, Kristie <Moore.Kristie@epa.gov>; Brown, Robert <Brown.Robert@epa.gov>

Subject: Re: Polling for Tuesday SAC hearing

Thanks, Palmer. Very much appreciate the extra work here. I'll pursue the process clarifications

Monday.

Have a good week!

John

Sent from my iPhone

On Jun 25, 2017, at 10:02 AM, Hough, Palmer <Hough.Palmer@epa.gov> wrote:

John

Deliberative Process / Ex. 5

I'm cc'ing Heidi and Carrie so they can give this a review as well.

I'm at NCTC all week for the annual IRT training course with the Corps but I will be checking my emails in case folks have questions.

-Palmer

From: Goodin, John

Sent: Saturday, June 24, 2017 6:58 AM

To: Fontaine, Tim; Hough, Palmer; Wehling, Carrie; Eisenberg, Mindy

Cc: Brown, Robert; Moore, Kristie; Peck, Gregory; Best-Wong, Benita; Connors, Sandra; Kochis, Daniel; Lape, Jeff; Southerland, Elizabeth; Spraul, Greg; Drummond, Laura; Woods, Terry; Giddings, Daniel; Shapiro, Mike; Bennett, Brittany; Kaiser, Russell

Subject: Re: Polling for Tuesday SAC hearing

Thanks, Tim. We'll work up a draft on

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Palmer/Heidi-- feel free to connect with me this weekend to get a headstart.

John

Sent from my iPhone

On Jun 24, 2017, at 6:37 AM, Fontaine, Tim <Fontaine.Tim@epa.gov> wrote:

Bob and Dan

While no due date was provided, they will likely want this early Monday. I believe that we have fact sheets on WOTUS and Bristol Bay that can be tweaked.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Terris, Carol" <Terris.Carol@epa.gov>
Date: June 23, 2017 at 7:40:01 PM EDT
To: "Swack, David" <Swack.David@epa.gov>, "Fontaine, Tim" <Fontaine.Tim@epa.gov>, "Hyde, Courtney" <Hyde.Courtney@epa.gov>
Cc: "Nguyen, Khanh" <Nguyen.Khanh@epa.gov>, "Beg, Gul" <Beg.Gul@epa.gov>, "Ripley, Laura" <Ripley.Laura@epa.gov>
Subject: Polling for Tuesday SAC hearing

Polling for Sen Murkowski -- -- please provide a quick set of background information bullets and talking point -- thank you!

Bristol Bay-- As part of EPAs May 11th settlement agreement—we have 60 days to withdraw the 2014 determination which is in the middle of the

commercial fishing day season. The Senator wants to have as much involvement with the Tribes as possible – and will ask the administrator to have a 60-90 day comment period to give enough time for the tribal commercial fishermen to provide comment.

Fish Grinding – Both On shore and Off Shore – looking to find a solution to this issue and seeing if we can commit to have some options or solution with a time frame for completion. Sen. Murkowski would also like these options ready to be discussed at the meeting of the two senior staffs.

These are more for FYI/awareness.

Diesel Generators in remote villages—Alaska remote villages, that use diesel generators submitted a comment to the regulatory relief panel on this issue. Specifically, for any generators purchased after model year 2014 you need to have a diesel particulate filter installed—if used for power generator. In Alaska, if you have this filter on—there is a high failure rate because of the temperature outside. If the filter fails... the generator shuts down and then you have to get a technician out there to fix it—which is very expensive. We will be asked to work with her on a solution to this issue.

Small Remote Incinerator issue -- Will ask EPA to look at administrative options and see what is possible and would like that to be done before the two senior staffs sit down.

PM 2.5 Fairbanks – Murkowski will ask the Administrator to remember the unique situation that Fairbanks experiences due to the geography, low temperature, and that they don't have access to natural gas— when EPA works with the state and borough to come up with plan.

WOTUS – as the Agency moves forward on a new WOUS rule, the EPA

needs to take into account the impact to Alaska. 2/3 of the state is already a wetland, and if connectivity is the key to the new rulemaking.. every mile of Alaska is connected to a wetland in some part.

<Pebble-Bristol Bay_6-25-17.docx>

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Goodin.John@epa.gov
Sent: Thur 7/13/2017 6:23:58 PM
Subject: Fwd: Docket ID No. EPA-HQ-OW-2017-0203 - Request for Extension of Comment Period of Definition of "Waters of the United States" - Recodification of Pre-existing Rules
2017-7-13 Request for comment period extension repeal rule.PDF
ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

From: "Navis Bermudez" <nbermudez@selcdc.org>
To: "CWAwotus" <CWAwotus@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>
Cc: "Blan Holman" <bholman@selcsc.org>, "Geoff Gisler" <ggisler@selcnc.org>
Subject: Docket ID No. EPA-HQ-OW-2017-0203 - Request for Extension of Comment Period of Definition of "Waters of the United States" - Recodification of Pre-existing Rules

Please find attached SELCs request for an extension of the comment period of *Definition of "Waters of the United States"* – *Recodification of Pre-existing Rules*, Docket ID No. EPA-HQ-OW-2017-0203. If you have any questions, feel free to e-mail or call me.

Best regards,

Navis A. Bermudez

Federal Legislative Director

Southern Environmental Law Center

(202) 499-2075

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Donna Downing[**Personal Email / Ex. 6**]
From: Goodin.John@epa.gov
Sent: Tue 7/11/2017 11:17:14 PM
Subject: Re: Shorter table comparison of longstanding rule, CWR, and a bit of **Deliberative Process / Ex. 5**

Thanks

Sent from my iPhone

On Jul 11, 2017, at 7:05 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Found a shorter table and added a somewhat simplistic **Deliberative Process / Ex. 6** column. Please let me know if this is helpful.

Also attaching the TPs prepared for discussing the options table.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW


Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

<Options table TPs.docx>

<Table comparing CWR to old rule to  docx>

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Donna Downing[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]
From: Goodin, John
Sent: Tue 6/27/2017 8:42:44 PM
Subject: FW: Signed Proposed Rule - Definition of the "Waters of the United States" Recodification of Pre-existing Rules
WOTUS STEP1.pdf

From: Threet, Derek
Sent: Tuesday, June 27, 2017 3:13 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: FW: Signed Proposed Rule - Definition of the "Waters of the United States" Recodification of Pre-existing Rules

John/Benita – FYI. WOTUS Step 1 was signed by Army and is on its way back to EPA. Mike Shapiro and others are aware. Ann will filter to other appropriate OW folks shortly. I let the OA, OPA, the political team, etc. know it was signed.

From: Threet, Derek
Sent: Tuesday, June 27, 2017 3:04 PM
To: Flynn, Mike <Flynn.Mike@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Hull, George <Hull.George@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Signed Proposed Rule - Definition of the "Waters of the United States" Recodification of Pre-existing Rules

Good afternoon,

The Definition of the "Waters of the United States" Recodification of Pre-existing Rules proposed rule was signed today by Administrator Pruitt and Douglas Lamont, of the Department of the Army. Attached is a scan of the rule.

Let me know if you have any questions.

Thanks.

Derek

Derek Jason Threet, Special Assistant
Office of the Administrator (OW, OECA, OEI, OCFO & OIG)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20004
Telephone: (202) 564-1409
Office Cell Phone Personal Phone / Ex. 6

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Donna Downing[Downing.Donna@epa.gov]
From: Goodin, John
Sent: Fri 6/23/2017 8:13:34 PM
Subject: FW: Current WOTUS Materials
[WOTUS Step 1 Comms Plan 6.23.17.docx](#)
[WOTUS Draft PR v1.docx](#)
[wotusfinal.jpg](#)

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Can we caucus at 9am with whatever crew you think appropriate?

Thanks and enjoy your weekend,

John

From: Drinkard, Andrea
Sent: Friday, June 23, 2017 4:02 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Cc: Dennis, Allison <Dennis.Allison@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: Current WOTUS Materials

Hi all—

I wanted to make sure that you had the current set of WOTUS materials. There have been no edits to the comm plan or to the press release since the last time you saw these, so they should be pretty familiar (except for you, Lee, since they're all new to you). The graphic is new, but has no words beyond the hashtag and the URL.

Deliberative Process / Ex. 5

Thanks so much and have a great weekend!

-Andrea-

Andrea Drinkard

Acting Communications Director

EPA Office of Water

Desk: 202.564.1601

Cell: Personal Phone / Ex. 6

Message

From: greenwalt.sarah@epa.gov [greenwalt.sarah@epa.gov]
Sent: 7/12/2017 8:51:18 PM
To: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]
Subject: Re: stats on tribal and federalism letters

Awesome, thanks Mindy!

Sent from my iPad

On Jul 12, 2017, at 3:03 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Andrew has better info!

Sent from my iPhone

Begin forwarded message:

From: "Hanson, Andrew" <Hanson.Andrew@epa.gov>
Date: July 12, 2017 at 2:51:14 PM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Christensen, Damaris" <Christensen.Damaris@epa.gov>
Subject: RE: stats on tribal and federalism letters

If there's undue confusion (opposed to normal/baseline confusion) **20 AGs** (attorneys general) signed onto one letter. **16 governors** wrote in individually. 2 governors signed the NGA letter (one of whom was Matt Mead (WY) who also wrote his own letter) and 2 governors signed the WGA letter.

Tate has all this info, as do Dolores and Julia.

From: Bennett, Tate
Sent: Wednesday, July 12, 2017 2:42 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>
Subject: Fwd: stats on tribal and federalism letters

Preston- can you send us an updated Gov's number? We have over 20.

Sent from my iPhone

Begin forwarded message:

From: "Bowman, Liz" <Bowman.Liz@epa.gov>
Date: July 12, 2017 at 2:08:59 PM EDT
To: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>, "Ford, Hayley" <ford.hayley@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: RE: stats on tribal and federalism letters

This is great; thanks for sharing/pulling this together.

From: Greenwalt, Sarah
Sent: Wednesday, July 12, 2017 2:08 PM
To: Ford, Hayley <ford.hayley@epa.gov>; Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Fwd: stats on tribal and federalism letters

For our metrics/press purposes.

Sent from my iPhone

Begin forwarded message:

From: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Date: July 12, 2017 at 12:25:54 PM EDT
To: "Greenwalt, Sarah" <greenwalt.sarah@epa.gov>
Subject: stats on tribal and federalism letters

Currently about **31** tribal comment letters

At a glance:

- Most of the written comment letters are from western tribes
- 6 letters are from state/regional/national tribal groups or fish commissions that represent multiple tribes: National Tribal Water Council, Region 10 RTOC, California Indian Environmental Alliance, Columbia River Inter-Tribal Fish Commission, Great Lakes Indian Fish and Wildlife Commission, Northwest Indian Fisheries Commission
- Most of the tribes oppose rescinding or revising the Clean Water Rule and oppose a Scalia-only approach to jurisdiction
- Only one tribe (Barona Band of Mission Indians (CA)) is supportive of the agencies' efforts to review and revise or rescind the CWR

Federalism

In total **24 meetings** were held from April 19 to June 29, and **156 letters** were received as part of the federalism process. The breakdown of who we heard from is as follows:

- 17 governors
- 2 lieutenant governors
- 20 attorney generals (19 signed onto 1 letter)
- 62 state agencies
- 63 local-government representatives

- 18 intergovernmental associations
- 8 state associations
- 11 water & irrigation districts

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities
Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

<WOTUSFedCommentsByState.docx>

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: greenwalt.sarah@epa.gov
Sent: Wed 7/12/2017 6:02:30 PM
Subject: Re: stats on tribal and federalism letters

Very helpful, thank you. See you soon

Sent from my iPhone

On Jul 12, 2017, at 12:25 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Currently about **31** tribal comment letters

At a glance:

- Most of the written comment letters are from western tribes
- 6 letters are from state/regional/national tribal groups or fish commissions that represent multiple tribes: National Tribal Water Council, Region 10 RTOC, California Indian Environmental Alliance, Columbia River Inter-Tribal Fish Commission, Great Lakes Indian Fish and Wildlife Commission, Northwest Indian Fisheries Commission
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Federalism

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- 18 intergovernmental associations
- 8 state associations
- 11 water & irrigation districts

Mindy Eisenberg

Acting Director, Oceans, Wetlands & Communities Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Kwok, Rose[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: Thur 7/6/2017 2:35:36 PM (UTC)
Subject: FW: OFR Edits to Your Signed Federal Register Document
2017-13997_1202979 (6).docx

FYI – I have not looked through these yet but will now.

From: Thomas, Elizabeth
Sent: Thursday, July 06, 2017 10:35 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; EPA-FederalRegisterLiaison <EPA-FederalRegisterLiaison@epa.gov>
Subject: OFR Edits to Your Signed Federal Register Document

Hi Rose:

Please review the attached OFR Word file with edits to your document. Upon your review, if you agree with their edits, please reply by noting that the changes are “approved.” If you have any concerns, please use the comment feature in the OFR Word file.

Do not use the “accept” nor “reject” feature for any of the changes, please leave the redline/strikeout if it’s apparent in the OFR Word file.

Thanks,

Elizabeth N. Thomas
Federal Register Liaison
Regulatory Management Division, Office of Policy
Environmental Protection Agency
WJC North 3526E
(202) 566-1609 (Office)
(202) 564-8601 (Fax)

To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Kwok, Rose
Sent: Thur 7/6/2017 12:15:41 AM
Subject: FW: EarthJustice letter
[17-000-6900.pdf](#)

Carrie – wanted to revisit this letter

Deliberative Process / Ex. 5

Thanks!

From: Wehling, Carrie
Sent: Tuesday, April 25, 2017 10:27 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: RE: EarthJustice letter

Here it is.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Tuesday, April 25, 2017 10:25 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma
<Kupchan.Simma@epa.gov>
Subject: RE: EarthJustice letter

Hi Carrie – I haven't seen a copy of the letter. Can you please send it? Thanks!

From: Wehling, Carrie
Sent: Tuesday, April 25, 2017 9:01 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: EarthJustice letter

FYI, to close the loop on this. I was having a general discussion with the docket and the WOTUS Earthjustice issue came up – see bullet 3 below. Let me know if we should discuss further. I told them

Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Scully, Carolyn
Sent: Monday, April 24, 2017 5:07 PM
To: Kerwin, Courtney <Kerwin.Courtney@epa.gov>; Green, Noelle <Green.Noelle@epa.gov>; Bernales, Barbara <bernales.barbara@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Schultz, Eric <schultz.eric@epa.gov>
Subject: Follow-up to Docket Center Comments Discussion April 24, 2017

Hi all,

Thank you all for the discussion today. I wanted to follow-up with a brief note that captures our discussion and our understanding of OGC's recommendations.

Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

Attorney Work Product / Ex. 5

Again, thank you for taking the time to work through these issues with us. Please let me know if

I missed anything from our conversation or did not capture something correctly.

Regards,

Carolyn

Carolyn Scully

Regulatory Support Division

Office of Environmental Information

(202) 566-1457

To: Kupchan, Simma[Kupchan.Simma@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Kwok, Rose[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: Tue 6/27/2017 4:21:02 PM (UTC)
Subject: OGC Clearance for WOTUS
WOTUS 2040-AF74 NPRM FRN 20170627.docx
WOTUS 2040-AF74 NPRM EA 20170627.docx

Hi OGC,

Attorney Client / Deliberative Process / Ex. 5

Rose Kwok
U.S. Environmental Protection Agency
Oceans, Wetlands, and Communities Division
kwok.rose@epa.gov
202-566-0657

To: Kupchan, Simma[Kupchan.Simma@epa.gov]; Thomas, Elizabeth[Thomas.Elizabeth@epa.gov]
Cc: Owens, Nicole[Owens.Nicole@epa.gov]; Nurse, Leanne[Nurse.Leanne@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Curry, Bridgid[Curry.Bridgid@epa.gov]
From: Kwok, Rose[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3D2987BA8F246A5A9E37773201FD180-KWOK, ROSE]
Sent: Mon 6/26/2017 11:07:21 PM (UTC)
Subject: RE: Fed Reg Prep for WOTUS

Deliberative Process / Ex. 5

WOTUS Draft Proposed Rule (OMB 06-23-17) EPA 6.26.17.docx

Thanks to Bridgid for her call this evening.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Attorney Client / Deliberative Process / Ex. 5

Rose

From: Kupchan, Simma
Sent: Monday, June 26, 2017 2:40 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Thomas, Elizabeth <Thomas.Elizabeth@epa.gov>
Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Subject: RE: Fed Reg Prep for WOTUS

Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Kwok, Rose
Sent: Monday, June 26, 2017 2:17 PM
To: Thomas, Elizabeth <Thomas.Elizabeth@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Subject: RE: Fed Reg Prep for WOTUS

Hi Elizabeth,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Thomas, Elizabeth

Sent: Monday, June 26, 2017 1:55 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>

Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>

Subject: RE: Fed Reg Prep for WOTUS

Hi Rose:

Regarding this question you stated below:

Deliberative Process / Ex. 5

Thanks,

*Elizabeth N. Thomas
Federal Register Liaison
Regulatory Management Division, Office of Policy
Environmental Protection Agency
WJC North 3526E
(202) 566-1609 (Office)
(202) 564-8601 (Fax)*

From: Kwok, Rose

Sent: Monday, June 26, 2017 12:13 PM

To: Thomas, Elizabeth <Thomas.Elizabeth@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>

Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: Fed Reg Prep for WOTUS

Hi Elizabeth,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!
Rose

From: Thomas, Elizabeth
Sent: Friday, May 26, 2017 2:04 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Fed Reg Prep for WOTUS

Hi Simma:

Deliberative Process / Ex. 5

Thanks,

*Elizabeth N. Thomas
Federal Register Liaison
Regulatory Management Division, Office of Policy
Environmental Protection Agency
WJC North 3526E
(202) 566-1609 (Office)
(202) 564-8601 (Fax)*

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 1:10 PM
To: Thomas, Elizabeth <Thomas.Elizabeth@epa.gov>
Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Fed Reg Prep for WOTUS

Thanks, Elizabeth,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Thomas, Elizabeth
Sent: Thursday, May 25, 2017 12:05 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: RE: Fed Reg Prep for WOTUS

Hi Simma:

I am not available to attend the meeting on Tuesday, 5/30/17

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

*Elizabeth N. Thomas
Federal Register Liaison
Regulatory Management Division, Office of Policy
Environmental Protection Agency
WJC North 3526E
(202) 566-1609 (Office)
(202) 564-8601 (Fax)*

From: Kupchan, Simma
Sent: Thursday, May 25, 2017 11:55 AM
To: Thomas, Elizabeth <Thomas.Elizabeth@epa.gov>
Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Nurse, Leanne <Nurse.Leanne@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: Fed Reg Prep for WOTUS

Hi Elizabeth,

I wanted to check to see if you were free to attend the meeting I have just postponed to this coming Tuesday afternoon

Deliberative Process / Ex. 5

that works better. Thanks!

If you aren't free, feel free to propose another time

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

To: Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Christensen, Damaris[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E04107C23C1043D6967754064C477A29-CHRISTENSEN, DAMARIS]
Sent: Mon 6/19/2017 5:33:26 PM (UTC)
Subject: FW: Deliberative Process / Attorney Client Ex. 5

Deliberative Process / Attorney Client Ex. 5

Deliberative Process / Attorney Client Ex. 5

Damaris

From: Nickerson, William
Sent: Monday, June 19, 2017 12:49 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Deliberative Process / Attorney Client Ex. 5

Lanelle looked at this not in Sharepoint, so attached is a redline with both our comments.

From: Christensen, Damaris
Sent: Thursday, June 15, 2017 11:06 PM
To: Owens, Nicole <Owens.Nicole@epa.gov>; Wiggins, Lanelle <Wiggins.Lanelle@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>
Subject: Nonresponsive Internal URL/ Ex. 6

Hi, all.

Deliberative Process / Attorney Client Ex. 5

Deliberative Process / Attorney Client Ex. 5 If you have Sharepoint access, please edit online and let me know.

Nonresponsive Internal URL/ Ex. 6

The document is attached if you don't have access to that Sharepoint site. Please reply all with your comments though I will take responsibility for uploading them.

Please send your **comments** NLT noon Monday June 19. Earlier is always nice. ☺

Thanks!

Damaris

From: Kupchan, Simma
To: Fotouhi, David; Eisenberg, Mindy
CC: Steven Neugeboren; Carrie Wehling; Wendelowski, Karyn
Sent: 6/15/2017 4:16:27 PM
Subject: Deliberative Process / ACP Ex. 5 Step 1 preamble for OMB
Attachments: WOTUS Step 1 preamble 6.15.17 for OMB.docx

David and Mindy,

Attached is the revised draft of the WOTUS Step 1 preamble for submission to OMB. Please let me know if you have questions. Thank you.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From:
To: Eisenberg, Mindy; Kupchan, Simma
CC: Shapiro, Mike; Goodin, John; Peck, Gregory; Downing, Donna; Kwok, Rose; Christensen, Damaris; McDavit, Michael W.; Wehling, Carrie; Wendelowski, Karyn
Sent: 6/15/2017 2:56:17 PM
Subject: RE: edits to new text in preamble
Attachments: clean version june 14.docx

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Eisenberg, Mindy
Sent: Thursday, June 15, 2017 10:29 AM
To: Kupchan, Simma
Cc: Neugeboren, Steven ; Shapiro, Mike ; Goodin, John ; Peck, Gregory ; Downing, Donna ; Kwok, Rose ; Christensen, Damaris ; McDavit, Michael W. ; Wehling, Carrie ; Wendelowski, Karyn
Subject: edits to new text in preamble

Hi Simma,
Here are a few edits from OWOW on the new text. Let me know when you are done with all of the edits and I can drop it into a clean version of the preamble that includes **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Oceans, Wetlands & Communities Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Neugeboren, Steven
To: Eisenberg, Mindy; Goodin, John; Simma Kupchan; Carrie Wehling; Karyn Wendelowski
Sent: 6/15/2017 2:07:01 AM
Subject: draft revisions to preamble for review by 11 am
Attachments: **Deliberative Process / attorney client Ex. 5**

John/Mindy/WLO folks

Attached is draft revisions to **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

Message

From: Peck, Gregory [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=633D0632187140118EA1387B7A8169B0-GPECK]
Sent: 6/20/2017 3:11:49 PM
To: Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]
CC: Shapiro, Mike [Shapiro.Mike@epa.gov]
Subject: FW: [Non-DoD Source] Correspondence from Alaska Governor Bill Walker RE: WOTUS
Attachments: 06.19.17 Scott Pruitt Douglas Lamont WOTUS.PDF; 6.19.17 State of Alaska WOTUS Agency Comments.pdf; AlaskaPermafrostMap_Front_Dec2008_Jorgenson_etal_2008.pdf

strongly supportive of the proposed direction and deference to states.

Greg

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

-----Original Message-----

From: Lamont, Douglas W SES (US) [mailto:[Personal Privacy / Ex. 6](#)mail.mil]
Sent: Tuesday, June 20, 2017 10:45 AM
To: Schmauder, Craig R SES (US) [mailto:[Personal Privacy / Ex. 6](#)mail.mil]; [Personal Privacy / Ex. 6](#)mail.mil]; Peck, Gregory <Peck.Gregory@epa.gov>
Subject: FW: [Non-DoD Source] Correspondence from Alaska Governor Bill Walker RE: WOTUS

FYSA...interesting letter.

-----Original Message-----

From: Dobson, Amy M (GOV) [mailto:amy.dobson@alaska.gov]
Sent: Tuesday, June 20, 2017 10:22 AM
To: Lamont, Douglas W SES (US) [mailto:[Personal Privacy / Ex. 6](#)mail.mil]
Subject: [Non-DoD Source] Correspondence from Alaska Governor Bill Walker RE: WOTUS

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Dear Mr. Lamont,

Please find attached a response from Governor Walker and our resource agencies, regarding your request for information pertaining to the definition of "waters of the United States."

Hard copies are being mailed from our Juneau office as well. Confirmation of receipt would be appreciated.

Regards,

Amy Dobson

Researcher

Office of Governor Bill Walker | Alaska

444 North Capitol Street, NW, STE 336

Washington, DC 20001

Phone: 202-624-5858

Fax: 202-624-5857

amy.dobson@alaska.gov < Caution-mailto:amy.dobson@alaska.gov >

[Caution-www.gov.state.ak.us](http://www.gov.state.ak.us/) < Caution-http://www.gov.state.ak.us/ >

From: Kwok, Rose
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Discussion of early comments and other related questions
Start Date/Time: Wed 7/5/2017 2:00:00 PM
End Date/Time: Wed 7/5/2017 2:45:00 PM
[EPA-HQ-OW-2011-0880-20870 \(1\).pdf](#)
[EPA-HQ-OW-2011-0880-13183.pdf](#)

I've set up this meeting with Carrie to discuss a few items:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Nonresponsive Internal URL/ Ex. 6

Deliberative Process / Ex. 5

Nonresponsive Internal URL/ Ex. 6

Potomac or Nonresponsive Conference Code/ Ex. 5 (in office) or Nonresponsive Conference Code/ Ex. 6 (out-of-office), Conference Extension:
Nonresponsive Conference Code/ Ex. 6

To: Kwok, Rose[Kwok.Rose@epa.gov]; Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Christensen, Damaris
Sent: Fri 6/30/2017 3:39:53 PM
Subject: RE: ACTION: Undark mag re: clean water rule

Also our FAQ

Q-2: How are the agencies (EPA and Department of Army) responding to the Executive Order?

A-2: To meet the objective described in the February 28, 2017, Executive Order, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country:

1. The agencies are taking action to establish the legal status quo in the *Code of Federal Regulations*, by proposing to recodify the regulation that was in place prior to issuance of the Clean Water Rule which is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
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From: Kwok, Rose
Sent: Friday, June 30, 2017 11:37 AM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

This is what we say on our website:

Two-Step Process

The EPA and Department of Army (the agencies) are implementing the Executive Order in two steps to provide certainty to the regulated community and the public while the agencies develop a revised definition of "waters of the United States."

1. The agencies plan to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.

2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule, taking into consideration the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is an issue of great national importance and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation. In the meantime, in light of the nationwide stay of the 2015 rule (PDF) EXIT, the agencies will continue to implement the regulatory definition in place prior to the 2015 rule, consistent with Supreme Court decisions, agency guidance, and longstanding practice.

From: Drinkard, Andrea
Sent: Friday, June 30, 2017 11:31 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

I'm sorry to ask this, but does someone have our most recent statement on Deliberative Process / Ex. 5
I can probably dig it up, John F is out today, so I don't have him as a resource...

From: Wehling, Carrie
Sent: Friday, June 30, 2017 11:25 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Re: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 30, 2017, at 11:23 AM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

I think so, but also copying Carrie from OGC to weigh in.

From: Drinkard, Andrea
Sent: Friday, June 30, 2017 11:08 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Fwd: ACTION: Undark mag re: clean water rule

I think **Deliberative Process / Ex. 5** could you confirm/give me your thoughts?

Sent from my iPhone

Begin forwarded message:

From: "Jones, Enesta" <Jones.Enesta@epa.gov>
Date: June 30, 2017 at 10:47:32 AM EDT
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Jones, Enesta" <Jones.Enesta@epa.gov>, "Lynn, Tricia" <lynn.tricia@epa.gov>
Subject: ACTION: Undark mag re: clean water rule

Can we address these?

Reporter: Charles Schmidt

DDL: 5 p.m. today

1. The June 27 news release from EPA proposing to rescind the Clean Water Rule quotes Scott Pruitt saying "We are taking significant action to return power to the

states and provide regulatory certainty to our nations farmers and businesses." What steps will the EPA take to ensure that state regulations sufficiently protect upstream tributaries and wetlands that could lose federal protection under a newly codified WOTUS?

2. Following the fractured Rapanos decision, the burden was on EPA to demonstrate that a tributary or wetland had significant nexus to navigable waters that might trigger permitting requirements under the Clean Water Act. Demonstrating significant nexus is costly and resource intensive. According to a 2010 NYT story quoting EPA's own scientists, the the Agency abandoned more than 1,500 CWA investigations that it could no longer afford. Will EPA devote sufficient resources to investigate potential jurisdiction during this time of uncertainty over WOTUS and its future?

To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Drinkard, Andrea
Sent: Fri 6/30/2017 6:03:39 PM
Subject: RE: ACTION: Undark mag re: clean water rule

Oops. I sent this off already. Let me see if I can get those changes in before it goes off to the reporter.

From: Wehling, Carrie
Sent: Friday, June 30, 2017 1:50 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Christensen, Damaris
Sent: Friday, June 30, 2017 1:49 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

Given that

Deliberative Process / Ex. 5

From: Wehling, Carrie
Sent: Friday, June 30, 2017 1:48 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5 Adding Andrea and Damaris.

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Friday, June 30, 2017 1:46 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

Also, I would change
Thanks!

Deliberative Process / Ex. 5

From: Wehling, Carrie
Sent: Friday, June 30, 2017 1:29 PM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Subject: RE: ACTION: Undark mag re: clean water rule

Can we **Deliberative Process / Ex. 5**

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Drinkard, Andrea

Sent: Friday, June 30, 2017 12:59 PM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose
<Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Subject: RE: ACTION: Undark mag re: clean water rule

Thanks to both of you! How about:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Christensen, Damaris

Sent: Friday, June 30, 2017 11:40 AM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Subject: RE: ACTION: Undark mag re: clean water rule

Also our FAQ

Q-2: How are the agencies (EPA and Department of Army) responding to the Executive Order?

A-2: To meet the objective described in the February 28, 2017, Executive Order, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country:

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From: Kwok, Rose

Sent: Friday, June 30, 2017 11:37 AM

To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Wehling, Carrie

<Wehling.Carrie@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: ACTION: Undark mag re: clean water rule

This is what we say on our website:

Two-Step Process

The EPA and Department of Army (the agencies) are implementing the Executive Order in two steps to provide certainty to the regulated community and the public while the agencies develop a revised definition of "waters of the United States."

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The agencies are aware that the scope of CWA jurisdiction is an issue of great national importance and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation. In the meantime, in light of the nationwide [stay of the 2015 rule](#) (PDF) [EXIT](#), the agencies will continue to implement the regulatory definition in place prior to the 2015 rule, consistent with Supreme Court decisions, agency guidance, and longstanding practice.

From: Drinkard, Andrea

Sent: Friday, June 30, 2017 11:31 AM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: ACTION: Undark mag re: clean water rule

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I can probably dig it up, John F is out today, so I don't have him as a resource...

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Sent: Friday, June 30, 2017 11:25 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Re: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 30, 2017, at 11:23 AM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

I think so, but also copying Carrie from OGC to weigh in.

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Sent from my iPhone

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Date: June 30, 2017 at 10:47:32 AM EDT
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Jones, Enesta" <Jones.Enesta@epa.gov>, "Lynn, Tricia" <lynn.tricia@epa.gov>
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To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Drinkard, Andrea[Drinkard.Andrea@epa.gov]
From: Kwok, Rose
Sent: Fri 6/30/2017 5:49:22 PM
Subject: RE: ACTION: Undark mag re: clean water rule

 is that okay, Andrea?

From: Christensen, Damaris
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To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
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Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

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Subject: RE: ACTION: Undark mag re: clean water rule

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Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Re: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5

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Sent: Friday, June 30, 2017 11:08 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Subject: Fwd: ACTION: Undark mag re: clean water rule

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Date: June 30, 2017 at 10:47:32 AM EDT
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Jones, Enesta" <Jones.Enesta@epa.gov>, "Lynn, Tricia" <lynn.tricia@epa.gov>
Subject: ACTION: Undark mag re: clean water rule

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DDL: 5 p.m. today

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To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Drinkard, Andrea[Drinkard.Andrea@epa.gov]
From: Christensen, Damaris
Sent: Fri 6/30/2017 5:48:51 PM
Subject: RE: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5

From: Wehling, Carrie
Sent: Friday, June 30, 2017 1:48 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5

Adding Andrea and Damaris.

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Friday, June 30, 2017 1:46 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

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Deliberative Process / Ex. 5

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From: Wehling, Carrie
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To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
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To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
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From: Christensen, Damaris

Sent: Friday, June 30, 2017 11:40 AM

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Subject: RE: ACTION: Undark mag re: clean water rule

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From: Kwok, Rose
Sent: Fri 6/30/2017 5:45:33 PM
Subject: RE: ACTION: Undark mag re: clean water rule

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Deliberative Process / Ex. 5

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From: Drinkard, Andrea
Sent: Fri 6/30/2017 5:03:25 PM
Subject: RE: ACTION: Undark mag re: clean water rule

Will do.

From: Christensen, Damaris
Sent: Friday, June 30, 2017 1:02 PM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
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From: Kwok, Rose

Sent: Friday, June 30, 2017 11:37 AM

To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: ACTION: Undark mag re: clean water rule

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Sent: Friday, June 30, 2017 11:31 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

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Deliberative Process / Ex. 5

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Subject: ACTION: Undark mag re: clean water rule

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Reporter: Charles Schmidt

DDL: 5 p.m. today

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To: Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Fri 6/30/2017 3:36:37 PM
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To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Drinkard, Andrea
Sent: Fri 6/30/2017 3:31:24 PM
Subject: RE: ACTION: Undark mag re: clean water rule

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To: Kwok, Rose[Kwok.Rose@epa.gov]; Drinkard, Andrea[Drinkard.Andrea@epa.gov]
Cc: Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Christensen, Damaris
Sent: Fri 6/30/2017 3:24:50 PM
Subject: RE: ACTION: Undark mag re: clean water rule

I just moved my comment since I saw Rose weighed in – here were my thoughts.

These are most likely **Deliberative Process / Ex. 5** I think for right now we should say something along the lines of **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 You might want to check with **Deliberative Process / Ex. 5** and see if they want to say something.

I'm happy to come up with more specific language if you want.

Damaris

From: Kwok, Rose
Sent: Friday, June 30, 2017 11:23 AM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>
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Cc: Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Kwok, Rose
Sent: Fri 6/30/2017 3:23:28 PM
Subject: RE: ACTION: Undark mag re: clean water rule

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From: Wehling, Carrie
Sent: Fri 6/30/2017 5:49:49 PM
Subject: RE: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Christensen, Damaris
Sent: Friday, June 30, 2017 1:49 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
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To: Kwok, Rose <Kwok.Rose@epa.gov>
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Deliberative Process / Ex. 5 Adding Andrea and Damaris.

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Water Law Office
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Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Kwok, Rose
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Deliberative Process / Ex. 5

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Subject: RE: ACTION: Undark mag re: clean water rule

I'm sorry to ask this, but does someone have our most recent statement or Deliberative Process / Ex. 5
I can probably dig it up, John F is out today, so I don't have him as a resource...

From: Wehling, Carrie
Sent: Friday, June 30, 2017 11:25 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Re: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 30, 2017, at 11:23 AM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

I think so, but also copying Carrie from OGC to weigh in.

From: Drinkard, Andrea
Sent: Friday, June 30, 2017 11:08 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Fwd: ACTION: Undark mag re: clean water rule

I think **Deliberative Process / Ex. 5** could you confirm/give me your thoughts?

Sent from my iPhone

Begin forwarded message:

From: "Jones, Enesta" <Jones.Enesta@epa.gov>
Date: June 30, 2017 at 10:47:32 AM EDT
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Jones, Enesta" <Jones.Enesta@epa.gov>, "Lynn, Tricia" <lynn.tricia@epa.gov>
Subject: ACTION: Undark mag re: clean water rule

Can we address these?

Reporter: Charles Schmidt

DDL: 5 p.m. today

1. The June 27 news release from EPA proposing to rescind the Clean Water Rule quotes Scott Pruitt saying "We are taking significant action to return power to the states and provide regulatory certainty to our nations farmers and businesses." What steps will the EPA take to ensure that state regulations sufficiently protect upstream tributaries and wetlands that could lose federal protection under a newly codified WOTUS?

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To: Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Wehling, Carrie
Sent: Fri 6/30/2017 5:28:37 PM
Subject: RE: ACTION: Undark mag re: clean water rule

Deliberative Process / Ex. 5

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Drinkard, Andrea
Sent: Friday, June 30, 2017 12:59 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

Thanks to both of you! How about:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Friday, June 30, 2017 11:40 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>;
Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

Also our FAQ

Q-2: How are the agencies (EPA and Department of Army) responding to the Executive Order?

A-2: To meet the objective described in the February 28, 2017, Executive Order, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country:

1. The agencies are taking action to establish the legal status quo in the *Code of Federal Regulations*, by proposing to recodify the regulation that was in place prior to issuance of the Clean Water Rule which is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition interpreting the jurisdictional bounds of the Clean Water Act that would replace the broader approach of the 2015 Rule, taking into consideration the principles that Justice Scalia outlined in the Rapanos plurality opinion. Justice Scalia's opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

From: Kwok, Rose

Sent: Friday, June 30, 2017 11:37 AM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: ACTION: Undark mag re: clean water rule

This is what we say on our website:

Two-Step Process

The EPA and Department of Army (the agencies) are implementing the Executive Order in two steps to provide certainty to the regulated community and the public while the agencies develop a revised definition of "waters of the United States."

1. The agencies plan to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule, taking into consideration the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is an issue of great national importance and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation. In the meantime, in light of the nationwide [stay of the 2015 rule](#) (PDF) [EXIT](#), the agencies will continue to implement the regulatory definition in place prior to the 2015 rule, consistent with Supreme Court decisions, agency guidance, and longstanding practice.

From: Drinkard, Andrea
Sent: Friday, June 30, 2017 11:31 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: ACTION: Undark mag re: clean water rule

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Deliberative Process / Ex. 5

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To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Wehling, Carrie
Sent: Fri 6/30/2017 3:25:13 PM
Subject: Re: ACTION: Undark mag re: clean water rule

Deliberative Process / ACP Ex. 5

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To: Nandi, Romell[Nandi.Romell@epa.gov]
Cc: Able, Tony[Able.Tony@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Wed 2/8/2017 5:33:47 PM
Subject: As requested: final draft powerpoint for "waters of the US" briefing on Thursday, reflecting OGC review
Powerpoint -- Transition briefing Clean Water Rule v3.pptx

Hi Romell:

Deliberative Process / Ex. 5

Please let me know if you have any questions or suggestions. Thanks!

Donna

From: Nandi, Romell
Sent: Wednesday, February 08, 2017 12:18 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>
Subject: RE: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Donna — **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Romell

Personal Phone / Ex. 6

From: Downing, Donna
Sent: Tuesday, February 07, 2017 5:13 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Hi Romell (with a cc to the usuals):

Attached please find the draft powerpoint on waters of the United States and the Clean Water Rule, for use at the briefing this Thursday.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

If reviewers have any comments or suggestions, please let me know asap. Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

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Washington, DC 20460

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004